S/N 10/680,008 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Michael J. Lyden	Examiner: George Evanisko
Serial No.:	10/680,008	Group Art Unit: 3762
Filed:	October 7, 2003	Docket: 279.376US2
Title:	METHOD FOR MONITORING END OF LIFE FOR BATTERY	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appellant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

Double Patenting Rejection

Appellant acknowledged the double patenting rejection, and will address the rejection when the rejection when the claims are otherwise found in condition for allowance.

Claim Rejections

Claims 9-11, 14, 18, 21, 28 and 30 were rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Kroll (U.S. Patent No. 5,741,307). Claims 12 and 24-47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kroll (U.S. Patent No. 5,741,307) as applied to claims 9 and 21 above.

(1) The present subject matter distinguishes between a discharge voltage and an initial voltage for a time measurement.

For example, as identified in Appellant's specification, the charge time measurement may find the charge transfer from the battery bypass capacitor C_b to the pacing supply capacitor C_S to be problematic near the end of life when the battery impedance is high.(e.g. p 15 ll 26 ff, p 25 ll 27-28, p. 27 ll 4-7, p. 28 ll 10-26, FIGS. 3A-3C). Thus, the present subject matter uses an initial voltage for a time measurement that is higher than a discharge voltage.

(2) Kroll does not distinguish between a discharge voltage and an initial voltage for a time measurement.

Appellant respectfully asserts that Kroll begins its time measurement at the discharge voltage (either the fully discharged capacitor voltage or the partially discharged/capacitor voltage/ "residual capacitor voltage"). Thus, Kroll does not distinguish between a discharge voltage and an initial voltage for a time measurement. Appellant has not found, and the Office has not shown that Kroll begins to charge the capacitor from the discharge voltage (regardless of whether it is fully discharged or partially discharged) before beginning the time measurement at an initial voltage that is higher than the discharge voltage.

(3) The Office improperly assumes that, because Kroll discharges a capacitor (to a discharge voltage), the discharge voltage must be less than an initial reference voltage (VI) for a charge time measurement.

Claims 9 and 21 recite a discharge voltage level (Vd), and recite charge time measurement set-up parameters that include a final voltage (VF) and an initial reference voltage (VI). Both claims 9 and 29 indicate that the capacitor is discharged to the discharge voltage (Vd) before beginning a time charge measurement, that the time charge measurement begins that the initial reference voltage (VI), that VI is greater than Vd, and that the charge time measurement ends at the final voltage (VF).

The Office asserts that "Kroll's system will have VI being greater than VD since the capacitor will be completely discharged, therefore having VD at 0 volts, and since VI will be the initial voltage applied to the capacitor to start charging the capacitor, which will be above 0 volts." However, the Office has not provided any objective evidence to support its conclusion that Kroll's time measurement begins at a voltage "above 0 volts" if the capacitor is fully discharged. Appellant respectfully submits that VI and VD are the same in Kroll.

(4) Discharging a capacitor before a charge time measurement does not mean that the capacitor is charged from a discharge voltage to an initial reference voltage (VI) higher than the discharge voltage before beginning the charge time measurement.

Kroll indicates that an "embodiment must include the complete discharge of the full charged capacitor prior to or contemporaneously with measurement/determination of the charging time, or use a corrected charge time based on a residual capacitor voltage found before the initiation of a new charge cycle (col. 8 lines 7-12). This does not refer to an initial reference voltage (VI) higher than the discharge voltage. Rather, by distinguishing fully discharged from partially discharged ("residual capacitor voltage") and the need to use a "corrected charge time' for partially discharged capacitors that leave a residual voltage, this section indicates that the charge time measurement begins at the discharge voltage of the capacitor, regardless of whether the discharge voltage is of a fully discharged or partially discharged capacitor.

(5) The Office improperly asserts that "it is inherent that the system have programmable VI and VF set up parameter since the system must be programmed to know at what voltage to start charging the capacitor and at what voltage to end the charging of capacitor.

"[The inherent disclosure] must be necessarily present **and** a person of ordinary skill in the art would recognize its presence."(emphasis added) *Crown Operations Intl. v. Solutia, Inc.*, 289 F.3d 1367, 1377 (Fed. Cir. 2002). An assertion of inherency can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

It is not necessary for Kroll to have programmable initial voltage (VI) and programmable final voltage (VF) set up parameters. Kroll indicates that "it is important that the reformation process include the complete discharge of the fully charged capacitor and its subsequent full recharge" (col. 7 lines 61-64). If the discharge voltage is the same as the initial voltage, and if it is "important," as provided by Kroll, that the capacitor be fully discharged and fully charged, then the initial voltage and final voltage are determined by the fully-discharged and fully-charged capacitor. These are not voltages that need to be programmed. Thus, it is not inherent that Kroll includes these programmable parameters.

(6) The §103 rejections amount to cursory conclusions without a clearly articulated reasoning with a rationale underpinning required to support a legal conclusion of obviousness.

The Office concludes it would be obvious to incorporate "the charge time set up parameters, such as VI and VF, since it was well known in the art that charging systems and methods use charge time set up parameters, such as VI and VF, so that the system knows at what voltage to start charging of the capacitor and at what voltage to stop the charging of the capacitor so the capacitor can be charged to be tested/used." The Office also states "it was known in the art that charging systems and method use "the memory specifically holding VF, VI and VD to provide a single access memory with the specific voltages necessary to determine the charge time. These are a conclusory statements that do not present a clearly articulated reason with a rational underpinning to support the legal conclusion of obviousness. Thus, they are improper.

CONCLUSION

Appellant respectfully submits that all of the pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is invited to telephone the below-signed attorney at (612) 373-6960 to discuss any questions which may remain with respect to the present application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this _____ day of February 2008.

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